GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Kumara Swamy Nayak, Warden Government B.C. Welfare Hostel, Srikakulam District, against the proceedings Rc.No.2185/87 Supndt, dt: 18.07.1988 of the Revenue Divisional Officer, Tekkali, Srikakulam District, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition allowed – Orders -Issued.

SOCIAL WELFARE (TW.CV.2) DEPARTMENT

G.O.MS.No. 1 Dated: 02-01-2020
Read the following:

1. Proceedings Rc.No.2185/87 Supndt. dt:18.07.1988 of the Revenue Divisional Officer, Tekkali, Srikakulam District.
2. Orders of the Hon'ble Court of Andhra Pradesh in WP No.12857/1988, dated: 13.07.1996.
3. Representation of Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, Srikakulam District, dated: 13.01.2017.
4. Govt. Memo No.457416/CV.2/2017, dated: 06.02.2017.
5. Representation of Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, Srikakulam District, dated 07.03.2017.
6. D.O. Letter No.457416/CV.2/2017, dated: 24.03.2017.
7. From the District Collector, Srikakulam, D.O.Lr.No.66/1986/D2, dt: 10.04.2017.
8. D.O. Letter No. 457416/CV.2/2017, dated: 02.08.2017.
9. From the B.C. Welfare (Vig.) Department, U.O.Note No. 1204/Vig./D.1/2010, dated: 24.08.2017, along with copy of the appeal dt:10.08.1996 filed by Sri Kumara Swamy Nayak and other documents.
10. From the District Collector, Srikakulam, Lr.RC.No.525/2015-C1, dt: 02.06.2018.
11. U.O.Note No. 457416/CV.2/2017, dated: 14.06.2018.
12. From the B.C. Welfare (Vig.) Department, U.O.Note No.1204/Vig./D.1/2010, dated: 25.06.2018.
13. Representation from Sri Kumara Swamy Nayak, dated: 07.08.2018.
14. Orders of the Hon'ble APAT in OA No.1102/2018 with VMA No.98/2018, dt:18.12.2018.
15. From the B.C. Welfare (Vig.) Department, U.O.Note No.1204/Vig./D.1/2010, dated: 01.02.2019, along with orders of the Hon'ble APAT in OA No. 1102/2018 with VMA No. 98/2018, dt: 18.12.2018.
16. Govt. Memo No.457416/CV.2/2017, dated: 27.02.2019.
17. From the District Collector, Srikakulam, Lr.D.O.Rc.No.D2/66/1986, dt: 26.06.2019.
18. Govt. Memo No.457416/CV.2/2017, dated: 13.08.2019 & 28.08.2019.
19. Representation of Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, Srikakulam District, dated: 03.09.2019.
20. Vakalath filed by Mrs. A. Bala Bharathi and B. Anuradha before the Appellate Authority on 07.09.2019.
21. Govt. Memo No.457416/CV.2/2017, dated: 09.10.2019.
22. Documents submitted by the Appellant through his Counsel before the Appellate Authority on 19.10.2019.

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ORDER:

In the reference 1st read above, the Revenue Divisional Officer, Tekkali, Srikakulam District has issued orders cancelling ST-Dhulia caste certificates of Sri Kumaraswamy Nayak and (5) others who are residents of Bhogabanda(V), Mandasa Mandal of Srikakulam District.

2. In the reference 2nd read above, Sri Hadia Naik and (4) others (Sri Kumara Swamy Naik is also one of the petitioner) have filed W.P.No.12857 of 1988 before the Hon'ble High Court of Andhra Pradesh, against the orders dated: 18.07.1988 of the Revenue Divisional Officer, Tekkali, Srikakulam District. The Hon'ble High Court of Andhra Pradesh while disposing the said WP on 13.07.1996 has ordered that "direct the Petitioners to file the appeal before the Government within two months from today and on filing of such appeal, the Govt., shall dispose of the same in accordance with law within a period of two months thereafter, Status-Quo as on today shall continue for a period of four months".

[P.T.O]

3. In the reference 4th read above while forwarding the reference 3rd read above the District Collector, Srikakulam was requested to examine the request of Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, Srikakulam District and furnish the factual position of the case and furnish his report and records of Sri Kumaraswamy Nayak S/o Hadia Nayak to Government for taking further action in the matter and to protect the benefits of the genuine ST people. In the reference 5th read above Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, Srikakulam District has requested to expedite the process the ST-Dhulia community claim of Sri Kumara Swamy Nayak. Accordingly, in the reference 6th read above the District Collector, Srikakulam was reminded in the matter.

4. In the reference 7th read above the District Collector, Srikakulam has furnished the brief facts stating that the individual joined as Warden Gr-II on 05.10.1982 & his date of birth is 01.05.1961 and the retirement date of the individual is 30.04.2021.(as per SR). Basing on a complaint filed against One Sri Kumaraswamy Naik, HWO, Borivanka, Ichapuram Mandal, who said to have obtained a false Caste Certificate, the Assistant Collector, Tekkali has conducted preliminary enquiry and reported that Sri Kumaraswamy Naik, do not belong to ST Caste and requested to initiate disciplinary action against him. Sri Kumaraswamy Naik, HWO, Borivanka, Ichapuram Mandal was placed under Suspension vide Procgs.Rc.No.60/86/D2, dt:08.05.1987, as it was established prima-facie that he continuing in service, by using false caste certificate and in order to implement the orders of the Hon'ble APAT in M.P.No.3020/1989 in R.P.No.15916/1989, dated: 03.08.2009, Sri Kumaraswamy Naik was re-instated into duty and posted as Warden, Government Boys Hostel(BC), MSR Puram, Vangara Mandal vide Procgs.Rc.No. 66/86/dt:16.08.1989. Again, the Revenue Divisional Officer, Tekkali, Srikakulam District has cancelled the ST-Dhulia caste certificates of Sri Kumaraswamy Nayak and (5) others vide Procgs.Rc.No.2185/1987 Supdt., dt:18.07.1988 . Aggrieved by the above orders the individual & (4) others have filed WP No.12857/1988 before the Hon'ble High Court of Andhra Pradesh. The Hon'ble High Court of Andhra Pradesh while disposing the said WP on 13.07.1996 has ordered that "direct the Petitioners to file the appeal before the Government within two months from today and on filing of such appeal, the Govt., shall dispose of the same in accordance with law within a period of two months thereafter, Status-Quo as on today shall continue for a period of four months". Further he has informed that in response to the Govt. Memo No.1204/Vig.D1/2010-19 Dt. 21.05.2016, their Office was served a memo dt. 06.06.2016 to Sri. Kumarswamy Naik, Hostel Welfare Officer to furnish a copy of the appeal petition filed before the Govt. as per the directions of the orders of the Hon'ble High Court WP No.12857, Dt. 13.07.1996. In response to the Memo, Sri Kumar Swamy Naik, Hostel Welfare Officer has submitted his reply and a copy of appeal petition filed by him to the Principal Secretary to Government Social Welfare Department (Backward Classes Welfare) Government of A.P., Hyderabad on 10.08.1996 i.e. with in the stipulated time. He has further stated that the Crucial date of passing of orders of the Hon'ble High Court is 13.07.1996, as such the following officials served as DBCWOs beyond the date of Court Orders to till date. Due to inaction of the Officials, the Petitioner has managed to continue in Service and getting salaries and other allowances from the Government duly causing pecuniary loss to Government Ex-chequer, which is intolerable. Finally, he has requested to expeditious action at Government level.

5. In the reference 8th read above the District Collector, Srikakulam was informed that the above appeal petition said to be filed before the Prl. Secretary (BC Welfare), Social Welfare Department is not available pending with the Government in the name of Sri Kumarswamy Nayak S/o Hadia Nayak in the B.C. Welfare Department or in Social Welfare Department for finalization. Further he was informed that as per the said directions of the Hon'ble High Court there are no stay orders on the proceedings of the District Collector. Therefore he was requested to take action against the appellant based on the proceedings and also to issue directions to the Administrative Department wherein the bogus claimant is working and furnish action report to Government for taking further course of action in the matter.

6. In the mean while, the B.C. Welfare (Vig.) Department has transmitted the copy of the appeal petition dt: 10.08.1996 filed by Sri Kumara Swamy Nayak together with enclosures to this Department and requested to take an appropriate action thereon and intimate the action taken report to their Department for taking further course of action in the matter, in the reference 9th read above.

7. Later on based on the directions issued in the reference 8th read above of the Government, the District Collector, Srikakulam has cancelled the ST-Dhulia caste certificates of Sri Kumara Swamy Nayak and his children vide reference 10th read above. Accordingly, the District Collector, Srikakulam has dismissed the appellant from services of Hostel Welfare Officer, Government B.C. Boys Hostel, Srikakulam District vide proceedings Rc.No.66/1986/D2/BCW, dated: 11.05.2018.

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8. In the reference 11th read above the B.C. Welfare Department has requested to furnish certain information relating to the dispute on the ST-Dhulia community claim of Sri Kumara Swamy Naik & the orders passed by the RDO, Tekkali in RC No. 2185/87, dt: 18.07.1988, for cancellation of his 'ST-Dhulia' caste certificate, so as to take further necessary action in the matter.

9. In the reference 12th read above the B.C. Welfare(Vig.) Department has again furnished the copy of the appeal petition dt: 10.08.1996 filed by Sri Kumara Swamy Nayak together with its enclosures and requested to take necessary action to dispose of the appeal petition, as per rules in force, keeping in view of the orders of Hon'ble High Court dt:13.07.1996 in WP No.12857/1988 and furnish action taken report .

10. In the reference 13th read above the appellant has filed representation before the Government, wherein he has stated that the District Collector, Srikakulam was violated rules issued in G.O.Ms.No.58, S.W. (J.2) Department, dated: 12.08.1997 and passed orders contrary to the A.P.C.S. (C.C&A) Rules 1991 and requested to set aside the orders passed by the District Collector, Srikakulam in Proceedings Rc.No.66-1986, D.2-BCW, dt:11.05.2018 and requested to drop further action against him.

11. He has also filed OA.No.1102 of 2018 with VMA No.98 of 2018 before the Hon'ble Tribunal of Andhra Pradesh, Hyderabad against the orders of the District Collector, Srikakulam issued vide Rc.No.66/1986/D2/BCW, dated: 11.05.2018, in the reference 14th read above. The Hon'ble APAT while disposing the above OA on 18.12.2018 has ordered that the impugned proceedings in Rc.No.66/1986/D2/ BCW, dated: 11.05.2018 are liable to set aside and respondents are directed to reinstate the applicant into service forthwith on receipt of a copy of the order. While furnishing the said orders to this Department, the B.C. Welfare Departmet has requested to decide the social status(ST) of the applicant and to dispose of the appeal petition pending with the Tribal Welfare Department, under intimation to their Department in the reference 15th read above.

12. In the reference 17th read above the Collector & District Magistrate, Srikakulam, has requested to dispose of the appeal petition filed by Sri Kumaraswamy Naik, HWO, Gr.II (Under dismissal from service) as early as possible as per the directions of the Hon'ble APAT and to avoid further legal complications on the Contempt application No.38/2019 in the OA No.1102/2018 filed by the appellant.

13. The said Appeal Petition has been posted for hearing on 16.03.2019, 24.08.2019, 28.08.2019 and finally on 19.10.2019 and the same has been informed to the Appellant and the Counsel for the Appellant and un-official respondent i.e. Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi, in the references 16th, 18th and 21st read above and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government.

14. In the reference 19th read above Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi has filed material against the ST-Dhulia social status of Sri Kumara Swamy Nayak. In the reference 20th read above Mrs. A. Bala Bharathi and B. Anuradha have filed vakalath before the Appellate Authority on 07.09.2019. In the reference 22nd read above the appellant has submitted bunch of documents through his Counsel in support of his ST-Dhulia community claim at the time of hearing held on 19.10.2019 before the Appellate Authority. The appellant/ the Counsel for the appellant and the complainant have attended for the hearing on 19.10.2019 and argued the case.

15. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant/ the brief facts submitted by the District Collector, Srikakulam and proceedings of the Revenue Divisional Officer, Tekkali, Srikakulam District, dt:18.07.1988, the Appellate Authority is observed that :

I. The appellant has been given a Caste Certificate that he belongs to DHULIA. But subsequently, certain people of Bhogabanda (V) put a petition alleging that Sri Kumaraswamy Nayak of the same village had obtained a caste certificate by giving false information that he belongs to Dhulia (ST) and he was appointed in BC Welfare Department. The MRO, Mandasa to whom the matter was referred to has conducted enquiries and sent a report to the Collector that Sri HadeyaNaika (father of Kumaraswamy Nayak) and his family members belong to Dolai caste

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but not Dhulia ST Community. The Sub-Collector observed that enquiries were conducted by the then Mandal Revenue Officer, Mandasa and the Asst. Collector and now the individual did not choose to peruse the records during the enquiries by appearing before them and now at this stage he is questioning the enquiry of the Mandal Revenue Officer and also competency of the issuing a show cause notice, that he knows that the caste of the children of Hadiya Nayak was recorded as Dolai, but not Dhulia. He did not putforth any evidence that he belongs to Dhulia(ST) and that the Collector has conducted denovo enquiry on the request of the Government and found that Sri Hadiya Nayak and his family members belong to Dolai but not Dhulia caste and in the circumstances, he concluded that Sri Hadiya Nayak and his family members including the appellant herein belong to one and the same caste Dolai but not Dhulia. As against this, the appellant has filed W.P.No.12857 of 1988 on the file of the Honourable High Court and the High Court through its orders dated 13-07-1996 directed the appellant to file appeal before the Government and accordingly the appellant filed an appeal dated 10-8-1996 to the Principal Secretary to Govt., Social Welfare Department (Backward Classes Welfare), Government of A.P., Hyderabad which was received by the T.W. Department from the B.C. Welfare Department in the reference 9th read above.

II. The main grounds in the appeal in brief are that there is no caste in the name of 'Dolai' instead of 'Dhulai' either in AP State or in the neighbouring Orissa State, that there are instructions on the subject how to verify the claims of an ST by birth was issued in 1975 etc, that there is no caste by name DOLAI and the people in elder days could not spell DHULIA properly used to spell Dolai, the enquiry officer has not enquired properly, no opportunity has been given to him, his father Sri Hadiya Naik was granted ST certificate on 4-7-1976 by the Tahsildar, Sompeta etc. and requested to set aside the impugned orders.

III. Sri B. Prabhakar, President, Kula Nirmulana Porata Samithi has filed material against the ST-Dhulia social status of Sri Kumara Swamy Nayak.

IV. During the course of the arguments, the counsel for the appellant submitted that:-

a) It can be seen from the material placed that even prior to issuance of the caste certificate in question, father of the Appellant, late Shri Hadeya Nayak S/o late Labanya Nayak elected as Sarpanch 2 terms in Grampanchayat Bogabanda village against S.T quota it is an open contest in 1967. The said Hadeya Nayak was issued S.T Certificate by the then Tahasildar in the year of 1976. He was also appointed as committee member, by Tribal Welfare Department in Special Nutrition Programme for Tribals implementation continuation local committee at Block Level Vide GOMS No.285, Dt.20-03-1976 of the D.G to Government and Director of Nutrition Programme and RC.No.281/76 Estt. Dt16-4-1976 of the Collector,(T.W), Srikakulam.

b) The RDO has not conducted any independent enquiry by himself and cancelled the ST caste Certificate based on the report submitted by the then Mandal Revenue Officer, who was the issuing authority of caste certificates and therefore, he cannot sit in judgment on his earlier certificates prior to 1993 as such his report is illegal. This Report was also not marked as exhibit in the impugned order and a copy thereof was also not provided to the Appellant. Further, the said report was prepared behind the back of the Appellant without providing any opportunity to the Appellant therefore it is violative of the principles of natural justice and honest in the eye of law and the order passed basing on the said report is liable to be set aside.

c) Further, the RDO also failed to accede to the request of the Appellant in granting permission to cross examine the said MRO who prepared the said Report and that such an act of the RDO is against the cannons of law.

d) The Appellant submits that the act of permitting the MRO to cause enquiry who issued the impugned Certificate is nothing but allowing the issuing authority to sit in judgment of his own action. The said act is unknown to even in Administrative Law.

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e) The Appellant further submits that the RDO failed to see that while dealing with the cancellation process the Collector was discharging quasi-judicial function, whereas he passed the impugned order as if sitting in discharge of administrative function and proceeded with in an arbitrary manner and in completely violating principles of natural justice.

f) The Appellant submits that his cousins were also subjected to such harassment. On re-enquiry by the Revenue Divisional Officer, Tekkali, at the instance of this Office, the certificates of these persons were found to be genuine. The letter of RDO, Tekkali Rc.No.1117/2002 dated 13.10.2002 to the Project Officer, ITDA speak these facts. This letter also records a finding that the said RDO has caused Village level enquiry in Konkadaputti and Bhogabanda villages and recorded statements of the Villagers and found that in these villages people belonging to Dhulia caste are found. The Appellant belongs to Bhogabanda Village. The Project Officer through his letter Rc.No.64/2002/A-Q dated 16.12.2002 in turn communicated the same to the Collector.

g) He further submits that on 19.3.2003, he made another application to the Concerned Authorities for issuance of caste certificate and it appears that the MRO, Mandasa addressed letter to the RDO, Tekkali through Rc.70/2003 B dated 26.2.2003 detailing the enquiry particulars and confirmed that Appellant belongs to Dhulia ST caste. Pursuant to the said application and detailed enquiry, the Mandal Revenue Officer, Mandasa, Srikakulam District through SR.No.4/2003/D. Dis No.840/03 G dated 3.4.2003 and SSID No.0133-0001-7001-1101, Application No.2003 363 dated 20.03.2003 issued him Community, Nativity and Date of Birth certificate which was duly signed by the Mandal Revenue Officer, Mandasa and Revenue Divisional Officer, Tekkali.

h) It has also been brought out that it is quite common in their area that litigation mongers send false and fictitious petitions whenever if any one fails to fulfil their illegal demands necessitating them to approach the Revenue Officials time and again.

i) In this connection it was further submitted that the Caste DHULIA is appearing in the Constitution (Schedule Tribes) Order 1950. He has also placed lists of castes belonging to Backward Classes in the States of Andhra Pradesh, Telangana and Orissa, to demonstrate that the plea of Dolai as a backward class is incorrect and that Dhulia is a Schedule Tribe. On perusal of the said lists reveal that there is no caste DOLAI figuring as backward class.

j) The Revenue Officials admit that the Mandal Revenue Office, Mandasa, Srikakulam District through SR.No.4/2003/D.Dis No.840/03 G dated 3.4.2003 and SSID No.0133-0001-7001-1101, Application No.2003 363 dated 20.03.2003 issued Community, Nativity and Date of Birth certificate, duly signed by the Mandal Revenue Officer, Mandasa and Revenue Divisional Officer, Tekkali to the Appellant.

k) The Revenue Officials further submit that various caste certificates issued to the relatives of the Appellant who were conferred with ST Dhulai Caste were found to be genuine on re-enquiry by the Revenue Divisional Officer, Tekkali and that RDO, Tekkali addressed a letter Rc.No.1117/2002 dated 13.10.2002 to the Project Officer, ITDA about the same. The Project Officer through his letter Rc.No.64/2002/A-Q dated16.12.2002 in turn communicated the same to the Collector on enquiries.

l) When an enquiry is being conducted by the RDO and when the appellant sought for perusal of the records, it is his bounden duty to allow such perusal. Denial to peruse the record on the premise, that he had given a statement to the MRO and denying the perusal of the record is arbitrary, and against the Principles of natural justice. This itself proves beyond any reasonable doubt that the enquiry conducted by the RDO is too perfunctory to be valid in law and therefore is liable to be set aside.

m) Though one person stating that he is representing the complainant stated that he is the SC leader. Excepting stating that the appellant herein does not belong to ST Dhulai, has not produced any material in support of his contention.

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n) The main contention is that the birth register is an evidence indicating the date of the birth of the child and that cannot be made as an instrument to decide the caste of the child. The Honourable High Court held in W.P.No.5897/1975 that "birth register is the evidence for date of birth only" and a copy of the said Judgment has also been filed before the RDO, as recited in the impugned order itself. But, without meeting the above submission of the appellant, the RDO relied upon the birth certificate for cancelling the Caste Certificate issued in favour of the appellant, arbitrarily. Therefore, the cancellation of the caste certificate by the RDO is wholly unsustainable and not maintainable in law.

o) The mother of the appellant has been conferred an ST caste certificate in accordance with 1993 rules after following due procedure, which cannot be denied now by the Department. Assuming the caste of the father other than an ST, still it is to be noted that the mother being an ST, the child is entitled to be declared as an ST in accordance with the Judgment of the Honourable Supreme Court of India inasmuch as the brought up of the appellant is in the area surrounded by STs.

16. After careful consideration all the material on record and reasons recorded supra, the Govt. came to an irresistible conclusion that Sri Kumaraswamy Naik, son of Hadeya Naik, Bogabanda village, Mandasa Mandal, Srikakulam District belongs to ST (Dhulia) and that the cancellation of the ST certificate of Sri Kumaraswamy Naik, by the RDO is vitiated by errors apparent on record.

17. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), hereby allowed the Appeal Petition filed by Sri Kumara Swamy Nayak, Warden Govt., B.C. Welfare Hostel, Srikakulam District, by upholding his Scheduled Tribe (Dhulia) community claim and the Proceedings of the Revenue Divisional Officer, Tekkali, Srikakulam District issued vide Proceedings Rc No.2185/87 dated 18.7.1988 are set-aside.

18. The District Collector, Srikakulam is directed to take necessary consequential action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P. SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, Srikakulam.
(With original records) (BY RPAD)

Sri Kumaraswamy Nayak
S/o Hadia Nayak,
Bogabanda village, Mandasa Mandal,
Srikakulam District.

Sri B. Prabhakar,
President, Kula Nirmulana Porata Samithi,
Munasabhupeta Village,
Ravivalasa Post, Tekkali Mandal, Srikakulam District.

Mrs. A. Bala Bharathi,
B. Anuradha, Advocates,
Plot No.170, Sri Veeranjaneya Colony,
Saheb Nagar, Vanasthalipuram.
Hyderabad- 500070.

Copy to:
The B.C. Welfare (Vig.) Department, A.P. Secretariat.
(with a request to take further action in the matter)

The District B.C. Welfare Officer, Srikakulam.
(With a request to take further action in the matter)
The Director, TCR & TI, AP,Vijayawada.

The OSD to Hon'ble Deputy Chief Minister(TW).
The PS to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER